

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KALISTA SELBY,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223015

Wayne Circuit Court

LC No. 99-001750

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of third-degree child abuse, MCL 750.136b(5), for which she was sentenced to two years' probation. We affirm.

Defendant's sole issue on appeal is that the trial court erred in excluding other acts evidence offered against a prosecution witness. "The decision whether such evidence is admissible is within the trial court's discretion and will only be reversed where there has been a clear abuse of discretion." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Although the claim of error has been preserved, any error "is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

We agree with defendant that the trial court erred as a matter of law in ruling that other acts evidence was not admissible against a person other than a criminal defendant. MRE 404(b)(1) applies to evidence of other acts by any person, be it a plaintiff, a defendant, a witness, or a third party who is not a participant in the trial. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995); *People v Rockwell*, 188 Mich App 405, 409-410; 470 NW2d 673 (1991). A defendant who proposes to offer such evidence against a witness "remains bound by the requirement that the evidence is not offered to prove conformity with character," *Catanzarite*, *supra*, and thus must show that the evidence was relevant for a noncharacter purpose. Cf. *Crawford*, *supra* at 385. Defendant has failed to address the issue of relevancy and show that the evidence was in fact admissible for a proper purpose, i.e., that the error was outcome determinative. Because defendant has failed to address an issue which must necessarily be reached to reverse the trial court, defendant is not entitled to relief. *Sargent v Browning-Ferris*

Indus, 167 Mich App 29, 37; 421 NW2d 563 (1998); *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin